

DEPARTMENT OF INDUSTRIAL RELATIONS
OFFICE OF THE DIRECTOR
P.O. Box 420603
San Francisco, CA 94142



June 10, 1998

Andrew S. Belknap, City Manager
City of Ojai
401 South Ventura Street
P. O. Box 1570
Ojai, CA 93024

Re: Public Works No: 98-004
Private Construction and Dedication of a Pergola,
Libbey Park Pergola Project

Dear Mr. Belknap:

This letter constitutes the determination of the Director of Industrial Relations regarding coverage of the above-referenced project under the California public works laws, and is made pursuant to 8 California Code of Regulations (Cal.Code.Reg.) §16001(a). Based upon my review of the documents submitted and an analysis of the applicable law, I have determined that this project is not a public work within the meaning of Labor Code section 1720(a).¹

A private non-profit organization, the Committee to Restore the Pergola, is raising funds to reconstruct a pergola or arbor at the entrance to Libbey Park on Ojai Avenue, also known as State Highway 150. The construction will take place on City land adjacent to the highway, at least in part on a Caltrans right of way. The construction is being paid for with entirely private funds. While the City of Ojai is not funding any portion of the construction, it will assume the responsibility of maintaining the pergola upon its completion. Based on the facts represented, the construction of the pergola is not a public work as that term is used in the Labor Code. However, because the pergola will be constructed on land that is part of a Caltrans right of way, it must be determined whether the provisions of Streets and Highways Code section 670.1 require the payment of prevailing wages.

Streets and Highways Code section 670.1 states:

(a) The department may issue a permit to the owner or developer of property adjacent to or near a state highway to

¹ Labor Code section 1720(a) states in relevant part: "public works" means: "Construction, alteration, demolition, or repair work done under contract and paid for in whole or in part out of public funds."

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construct, alter, repair, or improve any portion of the highway for the purpose of improving local traffic access, if the improvements to the highway are required as part of, or as a condition to, the development of property and the improvements are accepted by the department.

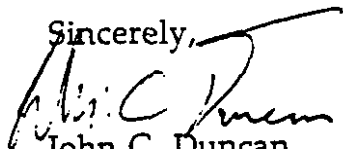
(b) The permit may be issued only if the work within the highway right-of-way is to be performed in accordance with plans and specifications approved by the department and the department reserves the right to inspect and accept the work as complying with the approved plans and specifications.

(c) All road, bridge, street lighting, or installation of signal work performed under a permit issued pursuant to this section for acceptance into the state highway system, except work performed solely to allow private encroachments onto the state highway or for utility or drainage encroachments within the state highway, are public works for purposes of Part 7 (commencing with Section 1720) of Division 2 of the Labor Code.

From the information provided by the City, it does not appear that any portion of the work performed will be to "construct, alter, repair, or improve any portion of the highway for the purpose of improving local traffic access," nor does it appear that any portion of the work involves "road, bridge, street lighting, or installation of signal work performed under a permit issued pursuant to this section *for acceptance into the state highway system.*" (Emphasis added.) The reconstruction of the pergola is part of an effort restore an historic landmark to Ojai's downtown and it will not affect or improve traffic access to the highway (except possibly during the construction process) because it will be a pedestrian entrance to Ojai's Libbey Park. Accordingly, the construction of the pergola adjacent to Highway 150 does not require the payment of prevailing wages.

I hope this determination satisfactorily answers your inquiry.

Sincerely,



John C. Duncan
Director

cc: Jose Millan, Labor Commissioner-DLSE
Dorothy Vuksich, Chief-DLSR
Diana Marshall, Chief-DAS
Vanessa Holton, Assistant Chief Counsel-DIR
William B. Bassett, Attorney, Caltrans